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FILED
DISTRICT COURT OF GUAM
NOV 15 2005 *7P*
MARY L.M. MORAN
CLERK OF COURT

Attorney for defendant

DISTRICT COURT OF GUAM

UNITED STATES OF AMERICA, (Case No. CR 94-00133
)
Plaintiff, (DECLARATION AND MOTION
) FOR CONTINUANCE
vs. ()
)
IKUO YOSHIZAWA, ()
)
Defendant. ()

I, Howard Trapp, declare, that I am the attorney for defendant.

2. This cause is set for a Rule 35¹ motion hearing, and for the setting of a date to self-surrender, all on December 7, 2005.

3. The original attorney for defendant was the Federal Public Defender. Of course the Federal Public Defender was court-appointed. On October

¹ Rule 35(b)(1) of the Federal Rules of Criminal Procedure.

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26, 2005, I was substituted as the attorney for defendant in the place and stead of the Federal Public Defender. I am retained. I am advised by defendant that from October 26, 1994, when the Federal Public Defender was appointed, until just recently, defendant never understood that he had the right to discharge his court-appointed attorney and retain an attorney of his own choosing.

4. The attorney for the government is Jeffrey J. Strand, Esq., Assistant United States Attorney, Office of the United States Attorney for Guam and the Northern Mariana Islands, Suite 500, Sirena Plaza, 108 Hernan Cortez Avenue, Hagåtña, Guam 96910, telephone (671) 479-4143.

5. One of the investigators assigned to this cause is FBI SA Joseph E. Author. Both the government and defendant need SA Author present at the Rule 35 motion hearing. I am advised by the attorney for the government that SA Author himself wishes to be present at the hearing, but that SA Author will not be available, because he will be on home leave, in the continental United States, from December 3, 2005, to January 6, 2006.

6. I am the attorney for defendant-appellant in United States vs. Stephen Remy Mueller, No. 05-10180 in the United States Court of Appeals for the

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Ninth Circuit. Mueller is scheduled to be heard in Honolulu, Hawaii, on November 22, 2005. Also, on October 31, 2005, one of my daughters-in-law gave birth to my second grandson in San Francisco. I shall be in San Francisco for the Thanksgiving Day holiday. I shall be off-island from November 22, 2005, to December 3, 2005.

7. I am advised by the attorney for the government that he will be off-island from December 19, 2005, to January 6, 2006.

8. I was not able to obtain defendant's file from the Federal Public Defender until November 3, 2005.

9. In light of the foregoing, the failure to grant a continuance of approximately two months would unreasonably deny me the reasonable time necessary for effective preparation, taking into account the exercise of due diligence, and for all practical purposes deny defendant of counsel of his own choosing.

10. I am advised by the attorney for the government that the government not only has no objection to this motion but that it also joins herein.

I declare under penalty of perjury that the foregoing is true and correct.

Wherefore defendant respectfully moves the Court for an order that the Rule 35 motion hearing, together with the setting of a date to self-surrender,

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heretofore set for December 7, 2005, be postponed and continued for approximately two months.

Executed on November 15, 2005, at Hagåtña, Guam.



HOWARD TRAPP
Attorney for defendant

The government not only has no objection to the foregoing motion but also joins therein.

Dated at Hagåtña, Guam this 15th day of November, 2005.



JEFFREY J. STRAND
Assistant U.S. Attorney
Attorney for plaintiff

(CONTINUANCE.IYoshizawa.wpd)